IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 534 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UMESHBHAI RAMESHBHAI JAYSWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 534 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR S.S.PATEL, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/10/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution, petitioner has challenged the order dated March 31, 2001 at Annexure "B" to the petition, passed by

the externing authority i.e. Sub-Divisional Magistrate, Baroda, by which he has externed the petitioner for a period of two years from five districts i.e. Baroda City & Baroda Rural, Anand, Bharuch, Narmada and Panchmahal and also the order dated June 28, 2001 at Annexure "C", passed by the appellate authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

2. A show cause notice dated Sept. 12, 2000 at Annexure "A" to the petition was issued to the petitioner under Section 59 of the Bombay Police Act ("the Act" for short), wherein several allegations were made against him to the effect that he is a strong headed quarrelsome and aggresive person who has no fear of law and order, picking up quarrel with people and gives threat to kill them, continues his anti-social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him and the activities carried out by him are detrimental to the maintenance of public order. Besides these, four cases for the commission of offence under the Prohibition Act also were registered against the petitioner at various Police Stations of Baroda Dist. Therefore, by issuing the show cause notice the petitioner was called upon to show cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgement.

3. The externing authority after considering the material on the record passed the impugned order of externment in exercise of the powers conferred under Section 56(a) of the Act, by externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred an appeal before the appellate authority under Sec. 60 of the Act, which was dismissed by the appellate authority vide order dated June 28, 2001, which has given rise to the present petition.

5. Mrs. Subhadra Patel, learned Counsel for the petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. Besides this, she has also raised a contention that the petitioner belongs to Savli Tal., Dist. Baroda, but he is externed not only from Baroda District, but four other contiguous districts. She also contended that the alleged activities which are

narrated in the show cause notice and the externment order are confined to the Baroda Dist only and the externing authority has not mentioned anything about the activities of the petitioner in the contiguous four districts. She therefore, prayed that both the impugned orders may be quashed and set aside.

6. Shri S.S. Patel, learned APP appeared for the State of Gujarat . He however does not dispute the fact that the externing authority has not given any cogent reason why the petitioner should be externed from other districts. The externing authority has passed the order in mechanical manner. In absence of any cogent reason in the impugned order, petitioner's externment from the other four contiguous districts suffers from non-application of mind and therefore he urged that appropriate orders may be passed.

7. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the order passed by the externing authority and the order passed by the appellate authority and other papers annexed to the petition.

8. It is true that the externing authority has power under Section 56 of the Act to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the district contiguous to his own district. The criteria for passing such an order is provided for in Section 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order.

9. Coming to the facts of the present case, there is no manner of doubt that the externing authority does mentioned in his show cause notice why petitioner should be externed from the contiguous districts. However, he does not mention the said fact in the impugned order of externment as to what necessitated him to pass the order of externment of the petitioner from the above mentioned four districts in addition to the Baroda Rural District. Therefore, it can be said that at the time of passing of the impugned order of externment the externing authority has not mentioned as to why the petitioner should be

externed from other four districts in addition to Baroda Rural District. On this sole ground the orders of the externing authority externing the petitioner and that of the appellate authority confirming the order of externment are rendered invalid and illegal and deserve to be quashed and set aside.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned orders at Annexures "B" and "C to the petition are quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M. Kapadia, J.)

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